

IN THE COURT OF APPEALS OF TENNESSEE
EASTERN SECTION

FILED

March 31, 1997

Cecil Crowson, Jr.
Appellate Court Clerk

HOLSTON VALLEY HOSPITAL
AND MEDICAL CENTER

Plaintiff - Appellee

v.

KEENER G. MOFFITT, TONY
REX MOFFITT, LOIS MARLENE
MORELOCK, MICHAEL LEE
MOFFITT

Defendants - Appellants

) SULLIVAN COUNTY
) 03A01-9608-CV-00271
)
)
)

) HON. JOHN S. McLELLAN, III,
) JUDGE
)
)
)

) REVERSED, DISMISSED, AND
) REMANDED

STEPHEN A. VICKERS OF BRISTOL, VIRGINIA FOR APPELLANTS

E. PATRICK HULL OF KINGSPORT FOR APPELLEE

O P I N I O N

Goddard, P. J.

Keener G. Moffitt, Tony Rex Moffitt, Lois Marlene
Morelock and Michael Moffitt, next of kin of Ruby Elizabeth
Moffitt, appeal a judgment of the Law Court for Sullivan County,
which found Holston Valley Hospital and Medical Center entitled

to a lien against proceeds of a settlement for the wrongful death of Ruby Elizabeth Mffitt.

They appeal, insisting that the lien in favor of the Hospital created by T. C. A. 29-22-101, was invalid because the hospital failed to send a notice by registered mail to counsel as required by T. C. A. 29-22-102(b). They also insists that under T. C. A. 20-5-106(a), any damages collected because of tortious or wrongful death passed to "the next of kin free and clear of the claims of creditors.

The case was tried upon the following stipulation:

1. Ruby Elizabeth Mffitt was struck by an automobile while crossing a street in Kingsport, Sullivan County, Tennessee on February 9, 1994. She was transported to Holston Valley Hospital and Medical Center, and was admitted to Holston Valley Hospital and Medical Center on February 9, 1994. She remained in the hospital pursuant to this admission through March 31, 1994. On that date, she was discharged on the records of the hospital and re-admitted to the Holston Valley Hospital and Medical Center Skilled Nursing Facility, where she remained through October 12, 1994. Therefore, hospital records show two admissions, the first being on February 9, 1994 through March 31, 1994 and the second being on March 31, 1994 through October 12, 1994. The outstanding account for the first admission is \$130,479.32. The outstanding account for the second admission is \$115,537.55.

2. Holston Valley Hospital and Medical Center filed two documents entitled "Notice of Hospital Liens" in the Office of the Circuit Court Clerk for Sullivan County, Tennessee at Blountville. The first, relating to the initial admission was filed on April 19, 1994. The second, relating to the second admission, was filed on October 31, 1994. Copies of these documents are attached.

3. Both notices contain the name of "Vicars (sic) and Mffatt", Attorneys at Law of 1201 Highland Avenue, Bristol, Virginia 24201. These attorneys deny

receiving a copy of said documents. It is the Hospital's policy to mail, by certified mail, a copy of the Notice to each individual which is listed on the Hospital Lien.

4. Subsequently, Ruby Elizabeth Møffitt died. She was survived by Keener G. Møffitt, Tony Rex Møffitt, Michael Lee Møffitt, and Lois Marlene Mørelock, who are her children, and who are the Defendants herein. These Defendants made a claim against Nationwide Insurance Company which is the insurance carrier for the driver who struck Ruby Elizabeth Møffitt.

5. This claim was settled by the payment of Fifty Thousand Dollars (\$50,000.00) from Nationwide Insurance Company to the Defendants. Pursuant to the agreement of the parties, Sixteen Thousand Six Hundred Sixty-six dollars and sixty-seven cents (\$16,666.67) is being held by the attorney for the Defendants pending the outcome of this case.

6. The parties, by counsel, agree to this Stipulation of Fact.

The statute authorizing the lien provides the following:

29-22-102. Perfecting lien--Filing and notice--Contesting--Effect of settlement or payment.--(a) In order to perfect such lien, the agent or operator of the hospital, before or within one hundred twenty (120) days after any such person shall have been discharged therefrom, shall file in the office of the clerk of the circuit court of the county in which the hospital is located, and in the county wherein the patient resides, if a resident of this state, a verified statement in writing setting forth the name and address of the patient as it appears on the records of the hospital, and the name and address of the operator thereof, the dates of admission and discharge of the patient therefrom, the amount claimed to be due for such hospital care, and to the best of the claimant's knowledge, the names and addresses of persons, firms or corporations claimed by such ill or injured person or by his or her legal representative, to be liable for damages arising from such illness or injuries.

(b) A copy of the claim shall, within ten (10) days from the filing thereof be sent by registered mail, postage prepaid, to each person, firm or

corporation so claimed to be liable on account of such illness or injuries, at the address given in the statement, and to the attorney, or attorneys, representing the person to whom services were rendered by the hospital if such attorney, or attorneys, are known to the claimant or could, with reasonable diligence, be known to the claimant.

The Trial Court determined that the inferences to be drawn from the stipulated facts do not show that T. C. A. 29-22-102(b), relative to notice to attorneys was complied with, but such was unnecessary in view of the fact the attorneys had actual notice of the filing of the lien.

In a recent case from this Court dealing with materialman's liens, D. T. McCall & Sons v. Seagraves, 796 S. W. 2d 457, 460 (Tenn. App. 1990), Judge Koch addresses general rules relative to liens:

Materialman's liens are creatures of statute. Williams Lumber & Supply Co. v. Poarch, 221 Tenn. 540, 544, 428 S. W. 2d 308, 310 (1968); Brown v. Brown & Co., 25 Tenn. App. 509, 512, 160 S. W. 2d 431, 433 (1941). Persons seeking to take advantage of the lien statutes must comply with all the applicable statutory requirements, including those relating to notice, recordation, and proper initiation of suit. Hamilton Nat'l Bank v. Long, 189 Tenn. 562, 567-68, 226 S. W. 2d 293, 296 (1949); American City Bank v. Western Auto Supply Co., 631 S. W. 2d 410, 423 (Tenn. Ct. App. 1981). (Emphasis supplied.)

Tennessee's courts have generally required strict compliance with the lien statutes, Eatherly Constr. Co. v. DeBoer Constr. Co., 543 S. W. 2d 333, 334-35 (Tenn. 1976); Smith v. Chris-More, Inc., 535 S. W. 2d 863, 863 (Tenn. 1976); Sequatchie Concrete Serv. v. Cutter Laboratories, 616 S. W. 2d 162, 165 (Tenn. Ct. App. 1980), because, as noted by the Supreme Court:

A materialman's lien is altogether statutory, and, when a lawmaking body prescribes the terms upon which it may be asserted, it is beyond the power of this court to waive its provisions or substitute others.

McDonnell v. Ann, 162 Tenn. 36, 41, 34 S.W2d 212, 213 (1931). However, any construction adopted by the courts should not be so strict that it defeats the statutes' purpose. Southern Blow Pipe & Roofing Co. v. Grubb, 36 Tenn. App. 641, 653, 260 S.W2d 191, 196 (1953).

We are of the opinion that the Hospital's failure to comply with the notice provision of the Hospital Lien Statute is fatal to its lien claim

The Statute upon which the Appellants rely relative to proceeds of damages from a wrongful death action being exempt from creditors is as follows:

20-5-106. Injury resulting in death--Succession to cause of action--Beneficiary who is minor or legally incompetent.--(a) The right of action which a person, who dies from injuries received from another, or whose death is caused by the wrongful act, omission, or killing by another, would have had against the wrongdoer, in case death had not ensued, shall not abate or be extinguished by the person's death but shall pass to the person's surviving spouse and, in case there is no surviving spouse, to the person's children or next of kin; or to the person's personal representative, for the benefit of the person's surviving spouse or next of kin; or to the person's natural parents or parent or next of kin if at the time of death decedent was in custody of the natural parents or parent and had not been legally surrendered by them otherwise to the person's legally adoptive parents or parent, or to the administrator for the use and benefit of the adoptive parents or parent; the funds recovered in either case to be free from the claims of creditors.

The Hospital defends the Trial Court's action with regard to T. C. A. 20-5-106(a) upon the ground that provisions of the Hospital Lien Statute, having been enacted subsequent to the one providing the funds, would "be free from the claims of creditors" repealed by implication that provision insofar as hospitals are concerned. Chief Justice Green, one of the premiere jurists of this State, recognized the Rule almost three-quarters of a century ago, in Southern Construction Co. v. Halliburton, 149 Tenn. 319, 329, 258 S.W. 409, 412 (1924), wherein he stated the following:

Although a later act may not cover the entire subject-matter of an earlier act, nor purport to provide a new system, if the later act is repugnant and irreconcilable on a particular point, it will operate as a repeal by implication to the extent of the repugnance and conflict. Baily v. Drane, 96 Tenn. 16, 33 S.W. 573. Balden v. State, 122 Tenn. 704, 127 S.W. 134.

The rule has been affirmed in a number of cases, including the relatively recent case of State v. Palmer, 902 S.W.2d 391 (Tenn. 1995), and an earlier case, Kennon v. Commercial Standard Ins. Co., 52 Tenn. App. 521, 376 S.W.2d 703 (1963).

Although the Trial Judge did not specifically so state, implicit in his determination is a finding that the provisions of the Hospital Lien Statute repealed by implication the provision of 20-5-106 that funds recovered would be free of claims of creditors.

We concur with the implicit finding of the Trial Court that the Code Sections touching on the question are irreconcilable and that the former was repealed by the latter.

For the foregoing reasons the judgment of the Trial Court is reversed and the case dismissed. The cause is remanded to the Trial Court for collection of costs below which are, as are costs of appeal, adjudged against the Hospital.

Houston M Goddard, P. J.

CONCUR:

Don T. McMirray, J.

William H Inman, Sr. J.